

§ 504.2

the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The penalty for violation of a Commission order under section 13 of the Shipping Act of 1984 (46 U.S.C. 41107–41109) may not exceed \$5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$25,000 for each violation, as adjusted by § 506.4 of this chapter. (Each day of a continuing violation constitutes a separate offense.)

[49 FR 44415, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999; 74 FR 50718, Oct. 1, 2009]

§ 504.2 Definitions.

(a) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. 40101–41309).

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), including a conference of such carriers.

(c) *Environmental impact* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *Potential action* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *Proposed action* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *Environmental assessment* means a concise document that serves to “provide sufficient evidence and analysis for determining whether to prepare an

46 CFR Ch. IV (10–1–09 Edition)

environmental impact statement or a finding of no significant impact” (40 CFR 1508.9).

(g) *Recyclable* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *Marine Terminal Operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49, United States Code.

(i) *Commission* means the Federal Maritime Commission, including any office or bureau to which the Commission may delegate its environmental policy analysis responsibilities.

[49 FR 44415, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999; 74 FR 50718, Oct. 1, 2009]

§ 504.3 General information.

(a) All comments submitted pursuant to this part shall be addressed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

(b) A list of recent Commission actions, if any, for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

[64 FR 23549, May 3, 1999]

§ 504.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment

Federal Maritime Commission

§ 504.4

because they are purely ministerial actions or because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. The following Commission actions, and rulemakings related thereto, are therefore excluded:

(1) Issuance, modification, denial and revocation of ocean transportation intermediary licenses.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR part 540.

(3) Receipt of surety bonds submitted by ocean transportation intermediaries.

(4) Promulgation of procedural rules pursuant to 46 CFR part 502.

(5) Receipt of service contracts.

(6) Consideration of special permission applications pursuant to part 520 of this chapter.

(7)–(8) [Reserved]

(9) Consideration of amendments to agreements filed pursuant to section 5 of the Shipping Act of 1984 (46 U.S.C. 40301(d)–(e), 40302–40303, 40305), which do not increase the authority set forth in the effective agreement.

(10) Consideration of agreements between common carriers which solely affect intraconference or inter-rate agreement relationships or pertain to administrative matters of conferences or rate agreements.

(11) Consideration of agreements between common carriers to discuss, propose or plan future action, the implementation of which requires filing a further agreement.

(12) Consideration of exclusive or non-exclusive equipment interchange or husbanding agreements.

(13) Receipt of non-exclusive transshipment agreements.

(14) Action relating to collective bargaining agreements.

(15) Action pursuant to section 9 of the Shipping Act of 1984 (46 U.S.C. 40701–40706) concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(16) Receipt of self-policing reports or shipper requests and complaints.

(17) [Reserved]

(18) Consideration of actions solely affecting the environment of a foreign country.

(19) Action taken on special docket applications pursuant to § 502.271 of this chapter.

(20) Consideration of matters related solely to the issue of Commission jurisdiction.

(21) [Reserved]

(22) Investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act of 1984.

(23) [Reserved]

(24) Action regarding access to public information pursuant to 46 CFR part 503.

(25) Action regarding receipt and retention of minutes of conference meetings.

(26) Administrative procurements (general supplies).

(27) Contracts for personal services.

(28) Personnel actions.

(29) Requests for appropriations.

(30) Consideration of all agreements involving marine terminal facilities and/or services except those requiring substantial levels of construction, dredging, land-fill, energy usage and other activities which may have a significant environmental effect.

(31) Consideration of agreements regulating employee wages, hours of work, working conditions or labor exchanges.

(32) Consideration of general agency agreements involving ministerial duties of a common carrier such as internal management, cargo solicitation, booking of cargo, or preparation of documents.

(33) Consideration of agreements pertaining to credit rules.

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by

§ 504.5

46 CFR Ch. IV (10–1–09 Edition)

written submission to the Secretary, explain in detail their reasons. The Secretary shall refer these submissions for determination by the appropriate Commission official, not later than ten (10) days after receipt, whether to prepare an environmental assessment. Upon a determination not to prepare an environmental assessment, such persons may petition the Commission for review of the decision within ten (10) days of receipt of notice of such determination.

(c) If the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, an environmental assessment shall be prepared pursuant to § 504.5.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 56 FR 50662, Oct. 8, 1991; 60 FR 27229, May 23, 1995; 61 FR 66617, Dec. 18, 1996; 64 FR 23549, May 3, 1999; 74 FR 50718, Oct. 1, 2009]

§ 504.5 Environmental assessments.

(a) Every Commission action not specifically excluded under § 504.4 shall be subject to an environmental assessment.

(b) A notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues may be published in the FEDERAL REGISTER. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the FEDERAL REGISTER.

[49 FR 44415, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999]

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, it is determined that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the FEDERAL REGISTER. This document shall include

the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4, will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the FEDERAL REGISTER. The Commission shall review the petitions and either deny them or order prepared an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

[64 FR 23549, May 3, 1999]

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the FEDERAL REGISTER.

(3) The major decision points in the EIS process are:

(i) The issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) The issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.